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By: **Delegates Redmer, Boteler, Dwyer, and O'Donnell**

Introduced and read first time: February 7, 2003

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Community Associations - Civil Liability**

3 FOR the purpose of limiting the civil liability of certain community associations and  
4 agents of the community associations under certain circumstances; authorizing  
5 certain community associations to register with the Secretary of State;  
6 providing for the application of this Act; and generally relating to immunity  
7 from civil liability for certain community associations and their agents.

8 BY repealing and reenacting, with amendments,  
9 Article - Courts and Judicial Proceedings  
10 Section 5-406  
11 Annotated Code of Maryland  
12 (2002 Replacement Volume)

13 BY adding to  
14 Article - State Government  
15 Section 7-108  
16 Annotated Code of Maryland  
17 (1999 Replacement Volume and 2002 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Courts and Judicial Proceedings**

21 5-406.

22 (a) (1) In this section the following words have the meanings indicated.

23 (2) (i) "Agent of an association or organization" means a director,  
24 officer, trustee, employee, or volunteer of an association or organization who provides  
25 services or performs duties on behalf of the association or organization.

1 (ii) "Agent of an association or organization" does not include an  
2 independent contractor who provides services or performs duties on behalf of the  
3 association or organization on a contractual basis.

4 (3) "Association or organization" means:

5 (i) An athletic club;

6 (ii) A charitable organization;

7 (iii) A civic league or organization;

8 (IV) A COMMUNITY ASSOCIATION;

9 [(iv)] (V) A cooperative housing corporation as that term is defined  
10 under § 5-6B-01 of the Corporations and Associations Article;

11 [(v)] (VI) A council of unit owners of a condominium as that term is  
12 defined in § 11-101 of the Real Property Article; or

13 [(vi)] (VII) A homeowners' association.

14 (4) "Athletic club" means a club organized and operated exclusively for  
15 recreational purposes, that is exempt from taxation under § 501(c)(7) of the Internal  
16 Revenue Code.

17 (5) "Charitable organization" means an organization, institution,  
18 association, society, or corporation that is exempt from taxation under § 501(c)(3) of  
19 the Internal Revenue Code.

20 (6) "Civic league or organization" means an organization, operated  
21 exclusively for the promotion of social welfare, that is exempt from taxation under §  
22 501(c)(4) of the Internal Revenue Code.

23 (7) "COMMUNITY ASSOCIATION" MEANS A NONPROFIT ASSOCIATION,  
24 CORPORATION, OR OTHER ORGANIZATION THAT PROMOTES SOCIAL WELFARE AND  
25 GENERAL CIVIC IMPROVEMENT AND REGISTERS WITH THE SECRETARY OF STATE  
26 UNDER § 7-108 OF THE STATE GOVERNMENT ARTICLE.

27 [(7)] (8) "Compensation" does not include actual and necessary expenses  
28 that are incurred by a volunteer in connection with the services provided or duties  
29 performed by the volunteer on behalf of an association or organization, and that are  
30 reimbursed to the volunteer or otherwise paid.

31 [(8)] (9) "Homeowners' association" means a nonprofit association,  
32 corporation, or other organization comprised of property owners in a subdivision or  
33 group of subdivisions whose purpose is to represent the mutual interests of the  
34 property owners regarding the construction, protection, and maintenance of the  
35 commonly owned or used property and improvements.

1            [(9)]    (10)    "Suit" means any civil action, except any health care  
2 malpractice action, brought against an agent of an association or organization or  
3 against the association or organization by virtue of the agent's act or omission in  
4 providing services or performing duties on behalf of the association or organization.

5            [(10)]   (11)    "Volunteer" means an officer, director, trustee, or other person  
6 who provides services or performs duties on behalf of an association or organization  
7 without receiving compensation.

8        (b)        Except as provided in subsection (d) of this section, an agent of an  
9 association or organization is not personally liable for damages in any suit if:

10           (1)        The association or organization maintains insurance covering  
11 liability incurred by the association or organization or its agents, or both, as a result  
12 of the acts or omissions of its agents in providing services or performing duties on  
13 behalf of the association or organization;

14           (2)        The terms of the insurance policy under which the insurance is  
15 maintained provide coverage for the act or omission which is the subject matter of the  
16 suit and no meritorious basis exists for the denial of the coverage by the insurance  
17 carrier; and

18           (3)        The insurance has:

19                    (i)            A limit of coverage of not less than:

20                                    1.            \$200,000 per individual claim, and \$500,000 per total  
21 claims that arise from the same occurrence; or

22                                    2.            \$750,000 per policy year, and \$500,000 per total claims  
23 that arise from the same occurrence; and

24                    (ii)           1.            If the insurance has a deductible, a deductible amount not  
25 greater than \$10,000 per occurrence; or

26                                    2.            If there is coinsurance, a rate of coinsurance not greater  
27 than 20 percent.

28        (c)        In suits to which the provisions of subsection (b) of this section apply, the  
29 plaintiff may recover damages from the association or organization only to the extent  
30 of the applicable limit of insurance coverage including any amount for which the  
31 association or organization is responsible as a result of any deductible or coinsurance  
32 provisions of such insurance coverage.

33        (d)        An agent of an association or organization shall be liable for damages in  
34 any suit in which it is found that the agent acted with malice or gross negligence, to  
35 the extent that the judgment for damages exceeds the limits on liability under  
36 subsection (c) of this section.

1 (e) The provisions of this section do not apply to suits brought by the Attorney  
2 General upon referral by the Secretary of State in which willful violations of Title 6 of  
3 the Business Regulation Article are alleged and proven.

4 (f) (1) This section does not create, and may not be construed as creating, a  
5 new cause of action or substantive legal right against an association or organization  
6 or an agent of an association or organization.

7 (2) This section does not affect, and may not be construed as affecting,  
8 any immunities from civil liability or defenses established by any other provision of  
9 the Code or available at common law, to which an association or organization or an  
10 agent of an association or organization may be entitled.

11 (g) This section may be cited as the Maryland Associations, Organizations,  
12 and Agents Act.

13 **Article - State Government**

14 7-108.

15 A NONPROFIT ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION THAT  
16 HAS BEEN IN EXISTENCE FOR AT LEAST 5 YEARS AND PROMOTES SOCIAL WELFARE  
17 AND GENERAL CIVIC IMPROVEMENT MAY REGISTER WITH THE SECRETARY OF STATE  
18 AS A COMMUNITY ASSOCIATION.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
20 construed to apply only prospectively and may not be applied or interpreted to have  
21 any effect on or application to any cause of action arising before the effective date of  
22 this Act.

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2003.